Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Cablevision Systems Corporation	)
Petition for Waiver of Section 76.630(a)	)
of the Commission's Rules As Applied	)
to Cablevision's New York City All-	)
Digital Systems	)

PETITION FOR WAIVER OF CABLEVISION SYSTEMS CORPORATION

Cablevision Systems Corporation ("Cablevision"), pursuant to section 76.7 of the Commission's rules,[1/] seeks a waiver from the encryption prohibition to authorize it to encrypt broadcast basic programming in its New York City franchise areas,[2/] effective upon its upcoming conversion to all-digital programming. Granting such a waiver in an all-digital environment will reduce costs, improve customer service, reduce fuel consumption and CO_2 emissions and have virtually no negative impact on customers who, as subscribers to a cable service that has already migrated to "all-digital," will already have set top boxes or CableCards.

INTRODUCTION AND SUMMARY

Authorizing Cablevision to encrypt its basic tier in New York City once the system's upcoming conversion to all-digital program delivery is complete would benefit subscribers by allowing Cablevision to offer them an easier and more efficient way to activate and terminate service -- without appointments, without delay. Encryption would also provide superior content protection for digital broadcast programming. Cablevision seeks this waiver only when its New

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1/ 47 C.F.R. § 76.7.

2/ Cablevision provides cable television services in the Bronx and about two-thirds of Brooklyn to about 700,000 households. Cablevision's systems in New York City are subject to effective competition.

York City system is all-digital, where – by definition – all or nearly all of the customers already will have digital set-top boxes or CableCards. Consequently, any negative impacts of encryption on subscribers will be negligible and would not implicate the concerns underlying the existing rule – while the benefits would accrue broadly, including the opportunity for reduced installation costs for new subscribers.

The Commission's ban on encrypting broadcast signals, developed for analog cable systems, provides that "[c]able operators shall not scramble or otherwise encrypt signals carried on the basic service tier."[3/] The Commission has found that the purpose of this rule is to limit the additional cost and inconvenience of the devices that consumers would need to view encrypted analog programming in an otherwise rate-regulated basic tier. The across-the-board migration to digital programming, encouraged by the Commission and being pursued by MSOs like Cablevision, moots this issue, because almost all customers will already have equipment necessary to view digital, and by extension encrypted, programming.[4/] Further, a waiver is consistent with the criteria set by the Commission rules since encryption would avoid the potential for "theft of basic tier service" and would yield substantial cost, environmental, and consumer benefits that demonstrate "a *strong need to scramble basic signals for other reasons*."[5/] Because the benefits of encryption are substantial and the burdens *de minimis*,

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3/ 47 C.F.R. § 76.630(a).

4/ Indeed, the Commission has previously suggested the encryption rule may not even apply to the transmission of digitally-delivered basic tier services, *see Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, 15 FCC Rcd 8776, ¶ 17 (2000) ("*April 2000 Compatibility Notice*") (indicating that the intent of section 76.630(a) in 1994 was to "prohibit *analog* basic service tier scrambling") (emphasis added), but it has never resolved the issue. *See Digital Broadcast Content Protection*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23550 (2003), ¶ 59 (requesting comment on the issue of whether the prohibition should apply in the digital context) ("*Digital Broadcast Content Protection Order & NPRM*").

5/ 47 C.F.R. § 76.630(a) (emphasis added).

granting the waiver would be consistent with the Commission's actions in response to prior waiver requests.

I. ALLOWING CABLEVISION TO ENCRYPT THE BASIC TIER IN ITS ALL-DIGITAL SYSTEMS WILL OFFER GREATER CONVENIENCE TO SUBSCRIBERS AND DETER SIGNAL THEFT

A. Encrypting The Basic Tier Will Enable Cablevision To Make Service Changes Remotely.

Encrypting broadcast basic programming will yield substantial consumer benefits. Today, with broadcast basic services always available "in the clear," Cablevision must secure its plant against unauthorized signal distribution. Cablevision does this by removing drops from a premise and capping them at the pole, or – in the case of the hundreds of multiple dwelling units ("MDUs") the company serves – by removing the drop and capping it at a lock box under the control of a building supervisor or custodian. New service activations must be physically extended to the premise from the pole or lockbox in the same manner. Thus, every time a subscriber to Cablevision's cable systems needs to activate, disconnect, or reconnect service, Cablevision must schedule an individual service visit and send a service representative to that subscriber's residence to meet this request. In some of Cablevision's service areas, the disconnect and reconnect cycle happens frequently due to non-payment issues or frequent moves. Last year, Cablevision performed over 1 million truck rolls associated with these types of service calls. The truck rolls and appointments associated with these operations are a burden on consumers, the company and the environment that could be substantially reduced by encrypting broadcast basic.

Every service visit to a subscriber home is expensive, but this is especially so in those parts of Cablevision's service area, like New York City, characterized by many MDUs or otherwise inaccessible easements, where Cablevision must often coordinate service visits with *both* residential customers and building supervisors to obtain access to the necessary equipment.

In these situations, access to the feeder plant that services the subscriber drops can be obtained only through coordination with homeowners, building managers, or property supervisors with access to rear yard or otherwise inaccessible feeder plant. The incidence of missed or postponed appointments can be high, and appointment times are extended due to the complex work of accessing and extending (or removing) live, unencrypted drops.

Encryption of broadcast basic in the New York City systems once those systems complete their planned conversion to all-digital will solve almost all of the issues associated with serving these drops. Encryption of broadcast basic would allow Cablevision to keep its plant "hot," to perform connections and disconnections remotely, and thereby to eliminate many truck rolls and service appointments for new and discontinuing customers. Subscribers could request new service via the telephone, e-mail or the Internet, without waiting at home for a representative. Customers could pick up a digital set-top box at a walk-in center or have it shipped directly to their home, plug in the digital box for any level of service, and enjoy it immediately, without waiting for a service appointment to install or reactivate a drop.

Allowing Cablevision to reduce truck rolls will reduce costs and streamline operations, bringing benefits to the company and its customers. The enhanced convenience and service responsiveness would enable subscribers to enjoy the full benefits of an all-digital system on many levels. Importantly, subscriber disruption would be minimal, since nearly every subscriber to all-digital systems will already have a set-top box.[6/] New subscribers that take advantage of

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6/ In an all-digital system, customers must either have digital QAM tuner televisions or cable set-top boxes. All of these devices will have some form of conditional access system, *save* for those customers who have digital QAM tuner televisions but subscribe only to existing broadcast basic service, if there are any such customers.

the option to self-install would be able to enjoy reduced installation costs, and customers that disconnect service will not have to await a truck roll and appointment to do so.

Eliminating truck rolls also assists traffic congestion in urban areas, advances the cable industry's efforts to become more fuel-conscious, and reduces the environmental impact of the operation of service trucks. Indeed, eliminating the truck rolls associated with activations and disconnects *alone* can be expected to reduce Cablevision's fuel consumption by more than 3.5 million gallons annually and the concomitant CO_2 emissions.

The Commission has recognized that waivers of section 76.630(a) are appropriate to allow a cable operator to perform service connections and disconnections remotely, particularly where subscriber connects and disconnects occur frequently,[7/] or where there is an "unusually high degree of subscriber disconnection due to non-payment of cable bills."[8/] Moreover, the Commission has found that the rationale behind the prohibition on encryption – protecting subscribers against the need for a set-top box – is not as compelling when there is a "high percentage of subscribers already using set-top boxes," because in that case "problems due to incompatibility between cable service and consumer electronics equipment will not be widespread once basic tier encryption is commenced."[9/] Grant of the requested waiver in this instance is consistent with these prior holdings.

7/ *See, e.g., Waitsfield Cable Company Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, Memorandum Opinion and Order, 16 FCC Rcd 18859, ¶¶ 4-5 (2001) ("*Waitsfield Cable Waiver*") (waiver is appropriate when a system serves subscribers that frequently connect and disconnect service).

8/ *Liberty Cablevision of Puerto Rico, Inc. Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, Memorandum Opinion and Order, 15 FCC Rcd 15064, ¶ 1 (2000) ("*Liberty Cablevision Waiver*").

9/ *Centennial Puerto Rico Cable TV Corp. Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, Memorandum Opinion and Order, 18 FCC Rcd 7736, ¶ 8 (2003) ("*Centennial Puerto Rico Waiver*") (granting a waiver where 96% of subscribers already had a set-top box). *See also*

B. Basic Tier Encryption Will Enhance the Security of Cablevision's All-Digital Network.

Permitting Cablevision to encrypt the digital basic tier on its all-digital cable systems also will reduce the potential for signal theft, and the attendant harms caused by piracy of cable service. Without full-spectrum encryption, primary connections can be split off to provide unauthorized secondary connections to adjacent apartments or secure access to junction boxes attached to the interior or exterior of buildings, without a ladder or bucket truck. Normal plant inspection for signal theft is difficult, because Cablevision has no direct access to these buildings and depends on service calls and converter requests as a means of ensuring the proper splicing of additional cable hookups and for gaining the access to premises needed to conduct theft inspections and to ensure the system's safe and proper operation.

Finally, establishing greater protections against piracy will provide programming content owners with greater assurance of protection for their high-value digital and HD content made available to over-the-air broadcast stations. As the Commission has acknowledged, absent some mechanism for protecting digital broadcast content against the risks of Internet redistribution, higher value content will migrate to a more secure distribution tier. Encrypting broadcast basic programming will ensure that broadcasts on that tier are as secure as programming on other, encrypted tiers and will ensure the continued robustness of the broadcast basic tier as a home for high-value content.[10/]

Liberty Cablevision Waiver ¶ 6 (granting a waiver where 98% of subscribers already had a set-top box).

10/ *Digital Broadcast Content Protection Order & NPRM* ¶ 4 ("[T]he potential threat of mass indiscriminate redistribution will deter content owners from making high value digital content available through broadcasting outlets absent some content protection mechanism.").

II. ENCRYPTION OF DIGITAL BASIC SERVICES DOES NOT IMPLICATE THE CONCERNS UNDERLYING THE ADOPTION OF THE ENCRYPTION BAN

The public policy concerns animating the Commission's decision to adopt the encryption ban for analog basic tier services in 1994 do not apply in the context of digital cable services, especially in systems subject to effective competition. The Commission prohibited encryption of the basic service tier in part so that consumers who believed that they had purchased cable-ready television sets would not be forced into purchasing a set-top box merely to receive local broadcast signals retransmitted on the basic tier that were subject to rate regulation.[11/] The ban also reflected "the fact that cable operators had previously generally not scrambled" analog signals carried on the basic tier.[12/]

Neither of these concerns is present in the digital context. Today's cable subscribers typically do not have an expectation – or the capability – of receiving digital cable services without a set-top box. Recognizing that the "express issue of digital basic tier encryption" is distinct from the prohibition contained in section 76.630(a),[13/] the Commission has periodically considered whether the rule should even apply to the digital basic service tier, but it has deferred consideration of the issue.[14/]

Whether or not the encryption ban should ever apply to digital basic tiers, however, the rationale behind the ban is particularly inapplicable to the kind of all-digital cable systems for

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11/ *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992*, First Report and Order, 9 FCC Rcd 1981, ¶¶ 49-59 (1994). *See Liberty Cablevision* ¶ 3; *Waitsfield Cable* ¶ 3; *Centennial Puerto Rico* ¶ 3.

12/ *April 2000 Compatibility Notice* ¶ 17.

13/ *Implementation of Section 304 of the Telecommunications Act of 1996*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885, ¶ 18 (2003).

14/ *See, e.g., Compatibility Between Cable Systems and Consumer Electronics Equipment*, Report and Order, 15 FCC Rcd 17568, ¶ 32 (2000).

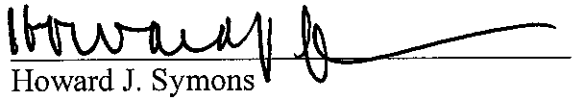
which Cablevision seeks a waiver. In these systems, all customers that receive any service beyond the broadcast basic-only tier will already have a set-top box or CableCard, and basic-only subscribers that do not have a digital television set with a built-in tuner will already have a set top box. For example, in New York City, the first system that Cablevision intends to convert to all-digital, 99% of subscribers already have a digital set-top box or cable card, and that figure is likely to increase even further when the system moves to all-digital. Grant of a waiver in these circumstances will not lead to any "widespread" compatibility problems that would justify denial of the waiver.[15/]

CONCLUSION

Cablevision has demonstrated the "strong need" required under the Commission's rules for the requested waiver of Section 76.630(a). The benefits of encryption are substantial and widespread, while consumer harm would be practically non-existent. For the reasons set forth above, Cablevision respectfully requests that the Commission waive the restriction on encryption of the basic service tier in its New York City franchise areas when those systems complete their conversion to "all-digital."

15/ *Cf. Centennial Puerto Rico Waiver* ¶ 8.

Respectfully Submitted,



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Dated August 19, 2009

DECLARATION OF MICHAEL OLSEN

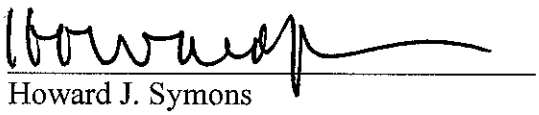
I, Michael Olsen, Vice President, Regulatory Affairs of Cablevision Systems Corporation, have reviewed the foregoing Petition for Waiver of Cablevision Systems Corporation. I am informed and believe, and on that basis hereby declare, under penalty of perjury, that the factual information contained herein is true.

Michael Olsen

Dated: August 19, 2009

VERIFICATION OF HOWARD J. SYMONS

I, Howard J. Symons, hereby verify that I have read the foregoing Petition for Waiver of Cablevision Systems Corporation and that, to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose.



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CERTIFICATE OF SERVICE

I, Stefanie Desai, caused to be served on this 19th day of August, 2009 a copy of the foregoing Petition for Waiver on the following parties via First Class Mail, postage prepaid, except as noted otherwise:

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